THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 6047 of 2005

Between:

V. Shourie Reddy S/o Chinnapa Reddy
R/o MIG B-152, Sagarnagar, Visakhaptnam

..... PETITIONER

AND

The Visakhapatnam Urban Development Authority rep by Chairman, Visakhapatnam

.....RESPONDENT

THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 6047 OF 2005

ORDER:

1. This writ petition has been filed by V.Shourie Reddy with a prayer to issue writ, order or direction more particular one in the nature of writ of mandamus declaring the action of the respondent in not restoring electricity supply and water supply to petitioner canteen in Tenneti Park, Visakhapatnam inspite of repeated requests and representations dated 19-11-2003, 1-1-2004, 15-10-2004, 18-11-2004 and 19-1-2005 even after completing the road widening and repairing works in the park and though the lease is subsisting till 17-10-2005 as illegal, arbitrary, capricious and violative of Article 19(1) (g) and 21 of the Constitution of India.

2. The petitioner worked in Indian Navy as Petty Officer Engineering and retired in 1996. He applied for allotment of the Sea bunk situated in Tenneti park on lease in

the year 1996 for a period 9 years subject to enhancement of rent at 35% after expiry of every three years period. When the respondent terminated the lease by notice dated 28-10-2002 with effect from 17-11-2002, the petitioner filed W.P.No.22526 of 2002. In pursuance of the interim order granted in WPMP 28269 of 2002 the respondent renewed the lease by order dated 31-12-2002 for a period of three years from 18-10-2002 to 17-10-2005 on enhanced monthly rent of Rs.3,131/-. While so, the respondent issued a letter dated 1-9-2003 to close the canteen from 1-9-2003 to 15-9-2003 for attending road widening work by the side of the said park. The petitioner closed the canteen pursuant to the letter of the respondent. During the continuance of road widening work, electricity supply and water supply to the canteen of the petitioner were disconnected. After completion of the road widening work, the petitioner submitted a representation dated 19-11-2003 to the respondent for restoration of electricity and water supply. Since, the respondent has not taken any action on the representation submitted by the petitioner for restoration of water supply and power supply, the petitioner has approached this Court by invoking the jurisdiction under Article 226 of the Constitution of India.

3. The respondent filed counter affidavit. One Ganapatiraju Krishna Bapi Raju has sworn to the counter affidavit filed on behalf of the respondent. It is stated in the counter affidavit that the respondent issued licence to the petitioners for refreshment stall in Teenarti park. As per the directions of the Government of Andhra Pradesh, the respondent has taken up Bheemili Beach Road widening and in the process of widening, Kailasa Hill which is by the side of the beach road and nearer to the canteen in Tenneti Park is required to be blasted. In view of the above, the petitioner-licensee was requested to close the canteen from 1-9-2003 to 15-9-2003. But, the blasting operations continued for a long period and in the blasting, the bunk of the petitioner was damaged. The damaged bunk at Tenneti Park is abutting to beach road. The respondent proposed to set up L.E.D. Screen and there is also proposal of modification of Tenneti Park with over all approach in view of the proposed widening and beautification of beach road up to Bheemili. In view of the widening of the road, the license granted to the petitioner to run refreshment stall at Teeneti Park was terminated vide letter Rc.No. 1500/92/1-3, dt. 15-3-2005. Hence, supply of power and water could not be restored.

4. I deem it appropriate to refer the relevant portion of the counter affidavit for better understanding and it is thus:-

"The damaged bunk at Tenneti Park is abutting to beach road, VUDA proposes to set up L.E.d. Screen and related items in the above park and there is also a proposal for modification of Tenneti Park with a overall approach in view of the proposed widening and beautification of beach road up to Bheemili. In view of the widening the license to Sri V.S.Reddy of bunk at Teeneti Park was terminated vide this office letter Rc.No.1500/92/1-3, dt.15-3-2005. Hence supplies of Electrical and Water supply could not be restored. Further claim of the petitioner that the liability to pay loss sustained to the licensor for 19 months period at rate of Rs.10,000/- per month as he used to earn the said amount per month. Since, VUDA granted license only not a lease. As per condition No.22 of license deed . IN the license period whenever required bunk to VUDA, the VUDA has right to take back the premises from licensor. Hence, VUDA is not having any liability to pay the claim to the petitioner. Further, it is true that the Respondent VUDA issued a resolution dt.27-3-1999 and respondent has been renewing for all other leases, licenses even after expiry of total period of 9 years. VUDA passed a Resolution No. 560 dated 11-7-2000 for general Shops, Stalls and Bunks but not applicable for bunks/canteen in parks like Tenneti Park, Kailasa Hills and VUDA park that too, the above resolution is applicable for the tenants who have completed 9 years period by that date. IT will not be applicable to others. As per the condition No. 22 of license deed that, if the premises is not required for its purpose extension of the license may be considered. It is required for VUDA purpose, hence the license was cancelled".

5. Heard the learned counsel for the petitioner and learned Standing counsel appearing for the respondent-Corporation.

6. The learned counsel for the petitioner submits that the lease period of the petitioner is in subsistence and therefore, there is no justification for the respondent in not restoring water supply and power supply. He further submits that the respondent is under an obligation to restore the power supply and water supply after completion of the road widening and their failure to restore the said supply amounts to violation of the terms of lease.

7. The learned standing counsel appearing for the respondent submits that the license itself has been revoked by letter dated Rc.1500/92/1-3, dated 15-3-2005 and therefore, the restoration of the water supply and power supply does not arise.

8. It is specifically stated by the respondent in the counter affidavit that the bunk which has been allotted to the petitioner on license has been damaged in the road widening and license granted to the petitioner has been terminated by the respondent. Unless the termination of licence is revoked, the question of giving direction to the respondent to restore the power supply of water supply to the bunk in question does not arise.

9. Therefore, the writ petition is devoid of merits and it is hereby dismissed. No order as to costs.

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B.Seshasayana Reddy,J

8th August, 2005

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THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 6047 OF 2004

8th August, 2005.